But does our legal system recognize a property right created purely by contract in matter not yet in existence? Such a right seems to be recognized by the Roman [11] and the German [12] laws. With the development of equity jurisdiction, property rights arising in and dependent upon executory contracts were gradually enforced. Succeeding generations saw this extended in many directions wherever mercantile convenience demanded it, while in many places such equitable property rights were extended to matter not yet in existence.[13] If, then, a debenture passes a true property right [14] in the earnings to be, it would be more than a contract to give a preference. Now although the English cases generally speak of a debenture as a "floating mortgage," "a charge upon the assets for the time being of a going concern," they substantially recognize that such definitions are self-contradictory and tacitly show that the earnings are what the debenture holder must look to. For they will not let him interfere with the management of the business,[15] or object to any sale,[16] lease, or mortgage [17] of the corporate property done in the course of business. And further a recent English case holds that he cannot, while the concern is running, prevent a garnishing creditor from going off with a specific asset.[18] *Evans* v. *Rival Granite Quarries*, [1910] 2 K. B. 974.

LABOR CONTRACT LAWS AND THE THIRTEENTH AMENDMENT. — Statutes in some states have made the breach of a contract to labor a crime.[1] These statutes have been attacked as obnoxious to the Thirteenth Amendment to the federal Constitution and the legislation thereunder,[2] on the ground that they keep the laborer in involuntary servitude for his master.[3] It is now clear that the Amendment applies to continuance in, as well as entry into, service, and performance of a contract may be in-

outstanding at the same time prior lien bonds, first and second mortgage bonds, equipment, collateral, terminal, and income bonds.

[11] See SALKOWSKI, ROMAN PRIVATE LAW, 484.

[12] See SCHUSTER, PRINCIPLES OF GERMAN LAW, 442 (*Sicherheits-hypothek*).

[13] "In truth although a sale or mortgage of property to be acquired in the future does not operate as an immediate alienation at law, it operates as the equitable assignment of the present possibility which changes into the equitable ownership as soon as the property is acquired by the vendor or the mortgagor." POMEROY, EQUITY JURISPRUDENCE, § 1288.

[14] Iowa, by statute, allows railroads to mortgage their future earnings. Jessup *v.* Bridge, 11 Ia. 572. The Georgia Code, § 1954, allows goods "in bulk, but changing in specific," such as a stock in trade, to be mortgaged. See also Sheffield Furnace Co. *v.* Witherow, 149 U. S. 574; Pennock *v.* Coe, 23 How. (U. S.) 117.

[15] *In re* Borax Co., [1901] 1 Ch. 326.

[16] *In re* Horne and Hellard, 29 Ch. Div. 736; Government Stock and Investment Co. *v.* Manila Ry. Co., [1897] A. C. 81; Biggerstaff *v.* Rowatt's Wharf, [1896] 2 Ch. 93.

[17] *In re* Hamilton's Windsor Iron Works, 12 Ch. Div. 707; Edward Nelson & Co. *v.* Faber & Co., [1903] 2 K. B. 367.

[18] *Accord*, Robson *v.* Smith, [1895] 2 Ch. 118; *In re* Roundwood Colliery Co., [1897] 1 Ch. 373. See also 55 Sol. J. 102, 121, 122.

[1] REV. STAT. N. CAR. (1908), § 3367; CR. CODE S. CAR. (1902), § 357. For similar old English laws, see 1 HOWELL, LABOR LEGISLATION, 2 ed., 38.

[2] U. S. REV. STAT., §§ 1990, 5526.

[3] Aside from constitutional objections to such punishment for breach, some contracts of personal service which tend toward slavery are invalid as against public policy. Parsons *v.* Trask, 7 Gray (Mass.) 473; Clark's Case, 1 Blackf. (Ind.) 122.

voluntary servitude.[4] But certainly some disagreeable results may be made to follow non-performance of a contract of personal service. The laborer for example is liable in damages for the breach. And equity sometimes prevents the "star," whose services are of peculiar value, from serving any one else.[5] A provision for fine or imprisonment in case of breach still leaves to the laborer the option to stop work, and only makes performance more desirable. It seems odd to say that the last step is prohibited by the Amendment because almost certain to accomplish what they all tend to bring about, namely, the performance of the contract. But the aim of the criminal law is through fear of punishment to prevent the happening of the act; the aim of the civil law is compensation to the person wronged. There is a corresponding difference in the effect upon the defendant of intimidation and persuasion. While the possibility of civil liability leaves a real option to break the contract, the fear of criminal punishment, like the fear of bodily injury, coerces the laborer into performance. Such statutes seem rightly held unconstitutional.[6]

A more common form of statute makes criminal any fraud in obtaining advancements on a contract of personal service,[7] usually accompanied by a provision that failure to repay or to perform shall be presumptive evidence of intent to defraud at the time the advancements were secured.[8] A state should be able to punish the obtaining of valuables by a false pretense of intention, even though the punishment tended to force the laborer to abide by a contract of personal service out of which the fraud grew,[9] and the legislature may provide that proof of one fact shall be *primâ facie* evidence of another.[10] But if there is no rational connection between the fact in issue and the acts on which the presumption is based, the rule of evidence works a disguised change in the substantive law and authorizes punishment for these latter acts alone. And on the ground that such a presumption permitted the breach of a labor contract to be punished as a crime the Supreme Court of the United States held an Alabama law invalid. *Bailey* v. *Alabama*, U. S. Sup. Ct., Jan. 3, 1911. If the broad rule of presumption is confined by construction to cases where warranted by the facts,[11] the statute should be upheld. But since it appeared that the presumption in the statute in the principal case might be applied to every breach of contract no matter how remote, the decision seems correct.

Since the Thirteenth Amendment does not destroy a state's police power,[12] the public interest in certain contracts should warrant it in

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[4] *Ex parte* Drayton, 153 Fed. 986. See Clyatt *v.* United States, 197 U. S. 207, 215, 216. But see Robertson *v.* Baldwin, 165 U. S. 275, 281.

[5] McCaull *v.* Braham, 16 Fed. 37; Duff *v.* Russell, 60 N. Y. Super. 80. In some cases equity has specifically enforced construction contracts, *e. g.*, contract to build a pipe line. But as these do not necessarily involve personal service, there was no "involuntary servitude." Grubb *v.* Starkey, 90 Va. 831; Gloe *v.* Chicago, etc. Ry., 65 Neb. 680.

[6] *Ex parte* Drayton, *supra; Ex parte* Hollman, 79 S. C. 9. *Contra*, State *v.* Murray, 116 La. 655.

[7] Laws of Me. (1907), ch. 7.

[8] Ga. Acts (1903), 90; Miss. Code (1906), § 1148; Rev. Laws, Minn. (1905), § 5187; Rev. Stat. N. Car. (1908), § 3431; Laws of N. Dak. (1907), ch. 208.

[9] See Peonage Cases, 123 Fed. 671, 690.

[10] Fong Yue Ting *v.* United States, 149 U. S. 698, 729.

[11] Mulkey *v.* State, 1 Ga. App. 521.

[12] See Barbier *v.* Connolly, 113 U. S. 27, 31.

making the breach of them criminal.[13] The contracts of sailors are so treated as being "historical exceptions," [14] and the public interest of to-day should be as potent as that of past ages out of which the exception grew. So statutes making criminal the abandonment of locomotives [15] seem constitutional. It is evident, however, that such legislation will be supported only in extreme instances, and there appears to be no such policy in favor of the statute in the principal case as to prevent its overthrow.[16]

PLURALITY OF VOTES CAST IN AN ELECTION FOR A DISQUALIFIED PERSON. — The rule is universal that if a plurality of votes in an election is cast for a person who is incapable of holding office, without notice to the electors of his disqualification, such votes may not be treated as nullities, but are effective to prevent the election of the candidate having the next highest number.[1] As to what notice will change such a result, the rule in England differs from that in this country. The present English law is that if the elector is chargeable with knowledge of the facts creating the disqualification, he is presumed to know the law, and his vote is thrown away.[2] And this is true even where it is doubtful whether the facts known do create a disqualification,[3] or where the notice given is not such as necessarily to command belief.[4] The English rule, however, had its origin in cases of elections in which the voting was *vivâ voce*, the number of voters small, and their knowledge of the candidates' qualifications easily ascertainable.[5] It is obviously ill-adapted to the conditions of manhood suffrage in this country and has been applied in only one [6] or possibly two [7] states. The most frequently quoted statement of our law is the following: "The existence of the fact which disqualifies, and of the law which makes that fact operate to disqualify, must be brought home so closely and so clearly to the knowledge or notice of the elector, as that to give his vote therewith indicates an intent to waste it." [8]

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[13] *Cf.* Farnham *v.* Pierce, 141 Mass. 203; County of McLean *v.* Humphreys, 104 Ill. 378. See FREUND, POLICE POWER, § 452.

[14] Robertson *v.* Baldwin, *supra*. See 10 HARV. L. REV. 515; 13 *id.* 305.

[15] N. J. GEN. STAT. (1895), 2696; DEL. REV. CODE (1893), 928.

[16] For a discussion of a different sort of "peonage law," see 17 HARV. L. REV. 121.

[1] The King *v.* Bridge, 1 M. & S. 76; The Queen *v.* Hiorns, 7 A. & E. 960; Saunders *v.* Haynes, 13 Cal. 145; Commonwealth *ex rel.* McLaughlin *v.* Cluley, 56 Pa. St. 270.

[2] Trench *v.* Nolan, Ir. R. 6 C. L. 464. See Drinkwater *v.* Deakin, L. R. 9 C. P. 626.

[3] Beresford-Hope *v.* Lady Sandhurst, 23 Q. B. D. 79.

[4] Tavistock Case, 2 P. R. & D. El. Cas. 5; Cork County Case, K. & O. El. Cas. 391; in which the notice of the candidate's disqualification was circulated by his rival candidate. The cases of contested elections to Parliament, of which the two cases cited are examples, do not form, in all respects, a consistent body of law, but practically all of them seem to recognize this form of notice as sufficient and proper. Dissatisfaction with such a rule has, however, occasionally been expressed. Second Clitheroe Case, 2 P. R. & D. El. Cas. 276; Second Cheltenham Case, 1 P. R. & D. El. Cas. 224.

[5] The King *v.* Hawkins, 10 East 211; Rex *v.* Foxcroft, 2 Burr. 1017; Fife Case, 1 LUDERS, ELECTIONS, 455.

[6] Gulick *v.* New, 14 Ind. 93; State *ex rel.* Clawson *v.* Bell, 169 Ind. 61; the latter of which qualifies other Indiana cases which contained language making notice of the disqualification unnecessary.

[7] Hatcheson *v.* Tilden, 4 Har. & McH. (Md.) 279; an early *nisi prius* decision.

[8] People *ex rel.* Furman *v.* Clute, 50 N. Y. 451. This decision is clearly the law in